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March 21, 2011

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Petition for Declaratory Ruling Regarding Zevo-3*, MB Docket No. 10-190,
Notice of *Ex Parte* Presentation

Sponsorship Identification Rules and Embedded Advertising,
MB Docket No. 08-90, Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On March 18, 2011, Susan Linn (by phone), Director of the Campaign for a Commercial-Free Childhood ("CCFC"), together with CCFC's counsel, Angela Campbell and Guilherme Roschke, and Georgetown Law student Khaliah Barnes, of the Institute for Public Representation ("IPR"), met with Commissioner Michael Copps and Commissioner Copps' Media Advisor Joshua Cinelli.

To illustrate how *Zevo-3* is a commercial for Skechers' sneakers, CCFC began by showing a Skechers commercial for Z-Strap sneakers featuring the spokescharacter Z-Strap.¹ CCFC then showed a short clip from an episode of *Zevo-3*, which featured the three *Zevo-3* spokescharacters.²

Counsel for CCFC provided a brief update regarding the petition for declaratory relief and the accompanying filings. CCFC stressed again that *Zevo-3* signals the escalation of product marketing and advertising to children. CCFC underscored that if the Commission does not take

¹ SKECHERS Super Z Strap Kids Sneakers, <http://www.youtube.com/watch?v=kq9GKuE5vXc> (Dec. 6, 2010).

² *Zevo-3* episode 5 part 2, <http://www.youtube.com/watch?v=jbtkYhdMD90&> (Dec. 6, 2010).

action in regard to *Zevo-3*, there is likely to be an increase in other programs based on characters used to advertise to children such as Tony the Tiger or Ronald McDonald.

CCFC discussed that whether *Zevo-3* is an advertisement under the statutory language of the Children's Television Act and under the CFR definition turns in part on whether MTV Networks ("MTVN") received economic inducement from Skechers USA, Inc. ("Skechers"). CCFC stressed that the Commission cannot rely solely on MTVN's bare assertion that *Zevo-3* is not a commercial because MTV Networks pays Skechers a "standard industry license fee" for each episode of *Zevo-3*.³ In order for the Commission to make an informed decision on CCFC's request for declaratory ruling, the Commission needs complete information concerning all of the *Zevo-3* contractual terms, including the licensing fee MTVN pays to Skechers, Skechers' purchase of advertising time from MTVN, and the monetary value of MTVN and Skechers' cross promotional and merchandising agreements. For example, Skechers has been promoting *Zevo-3* by giving away DVDs of *Zevo-3* with purchases of Skechers shoes.

CCFC acknowledged that technology and advertising have evolved significantly since the inception of the rules regarding advertising limits in children's programming. CCFC is not opposed to rulemaking in order to better clarify advertising limits in children's programming due to ever-evolving advertising techniques. However, CCFC argued that *Zevo-3* still violates the Commission's existing policy which requires separation of commercial and program content during children's programming. CCFC also urged the Commission to amend its rules in Docket 08-90 to make explicit that embedded advertising, such as that in *Zevo-3*, would run afoul to the separations policy.

Lastly, CCFC stressed that issuing a declaratory ruling would simply apply the Children's Television Act to this set of facts and not violate the First Amendment.

In conclusion, CCFC urged the Commission to act regarding this matter because its inaction could continue to lead to violations of advertising limits and embedded advertising in children's programming, and violations of the Commission's longstanding separation policy.

Respectfully submitted,

Angela Campbell and Guilherme Roschke
Staff Attorneys
Khaliah Barnes
Georgetown Law Student

cc (via email) : Commissioner Michael Copps
Joshua Cinelli

³ See Letter from Antoinette Cook Bush and Jared Sher, Counsel to MTV Networks, and Michael Kellogg and Aaron Panner, Counsel to Skechers USA, Inc., to Austin Schlick, General Counsel, FCC, MB Docket No. 10-190, page 1 (dated February 23, 2011).